APPEAL NO. 021815
FILED SEPTEMBER 4, 2002

Following a contested case hearing (CCH) held in Dallas, Texas, on June 20, 2002, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act), the hearing officer resolved the two disputed issues by determining that the respondent/cross-appellant (claimant) sustained a compensable injury on _____, and that she had disability from that injury from _____, through March 6, 2002. The appellant/cross-respondent (carrier) requests our review of these determinations for evidentiary sufficiency, stressing the substantial inconsistencies in the claimant's evidence and asking that we find the claimant's evidence not credible and render a new decision that the claimant did not sustain a compensable injury and did not have disability. The claimant has also filed an appeal, asserting error in the hearing officer's failure to specify as injured those body parts listed by the claimant in her Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41), and error in ending her period of disability on March 6, 2002, based on the lack of medical reports to support disability beyond that date. The claimant requests that we remand the case for the hearing officer to include the injured body parts in his decision and to use the correct legal standard for determining the period of disability. The file does not contain responses to the appeals.

DECISION

Affirmed.

The claimant testified that her neck was injured on _____, in an automobile accident; that she returned to the workforce about one month before the claimed injury in this case when she was assigned by the temporary labor agency employer to work at a job site packing styrofoam cups; and that while so employed, on _____, she slipped on fluid near the assembly line and fell onto her buttocks with her legs bent back and her hands spread out. At one point, she testified that she injured her right leg, low back, arms, and, essentially, her whole body in the fall. At another point she testified that her injured body parts include her left heel, right heel, right knee, back, buttocks, and right arm up to her shoulder and the base of her neck. The claimant further stated that her treating doctor took her off work, referred her for diagnostic testing, treated her injuries conservatively, and has not released her to return to work. She stated that her doctor asked her, apparently in March 2002, if she could return to work; that she told him she could work but not at the job she had been performing because her hand still bothered her; that her supervisor at the temporary agency told her they did not have a job for her; and that for about one month she has felt she could work but that she does not have a job.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals

Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The evidence was in substantial conflict concerning the parts of the claimant's body injured in her slip-and-fall accident and, as the hearing officer observed, there was no disputed issue before him concerning the extent of the claimant's injury. We do not find error in the hearing officer's not having specified in a finding of fact the parts of the claimant's body injured in her slip-and-fall accident. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

CONCURRING OPINION:

I concur in the determination that the claimant sustained a compensable injury, but write separately because the hearing officer has mischaracterized all possible future dispute over the scope of that injury as an "extent of injury" issue and essentially invited future dispute and injected lack of clarity in his decision.

When a worker is hurt, the carrier is obliged to dispute that injury as set forth in Section 409.021, and may not recharacterize any portion of that injury as an "extent of injury" question for the purposes of avoiding the consequences of an untimely dispute. As I review this case, the carrier was saying that the claimant's injuries likely resulted from an automobile accident-effectively a "sole cause" defense. The TWCC-41 is in evidence and itemizes several bodily regions; the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) only disputes one of those listed injuries. The scope of the injury that is affected by the hearing officer's ruling is not limited simply because the carrier decided to dispute only one aspect of that injury. The compensable injury found by the hearing officer is necessarily the claimed injury before him in this proceeding, in the absence of any limitation on that injury, and it is the one for which the carrier owes medical and income benefits, absent newly discovered evidence at some future time.

Because the CCH is in place to resolve disputes, not perpetuate them, a separately stated issue on "extent" of injury does not have to be reported from the benefit review conference in order for the hearing officer to determine the scope or nature of the injury

creating the controversy before him. Notwithstanding his dicta ruminations on whether a dispute could be raised in the future, the effect of his decision is that the claimant's claimed injuries, actually litigated in this proceeding, are ones for which compensation is payable.

_____

Susan M. Kelley
Appeals Judge